

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**CITY OF GALLUP, NEW MEXICO**  
**on behalf of itself and all other similarly**  
**situated New Mexico municipalities,**

**Plaintiff,**

**v.**

**No. CV 07-644 JC/RLP**

**HOTELS.COM, L.P., et al.,**

**Defendants.**

**MEMORANDUM OPINION AND ORDER**

THIS MATTER comes before the Court on Plaintiff City of Gallup's *Motion for Reconsideration of Denial of Plaintiff's Amended Motion for Partial Summary Judgment* (Doc. 234) ("Motion"), filed March 9, 2010. Having reviewed the parties' submissions and being otherwise informed in the premises, the Court will DENY the Motion for the reasons set forth below.

**I. BACKGROUND**

This lawsuit arises from the alleged failure by online travel companies to remit the appropriate amount of tax from the sale of New Mexico hotel rooms to New Mexico municipalities and counties. Defendants "contract with hotels for rooms at negotiated discounted room rates, then mark up their inventory of rooms and sell the rooms to members of the public, who actually occupy the rooms." *Complt.* at ¶ 28. Although Defendants do remit taxes to Plaintiff, the remittances are based on the lower negotiated discounted room rates rather than the ultimate prices paid by the consumer. *Id.* Plaintiff therefore contends that Defendants have violated the New Mexico Lodgers' Tax as well as the municipal ordinances enacted

pursuant thereto. *Id.* at ¶ 59 (contending that Plaintiffs are “entitled to payment of the unpaid lodger’s taxes, penalties, interest, cost of suit and attorney’s fees”).

Plaintiff City of Gallup previously sought summary judgment as to liability and the applicable statute of limitations. *See Pl’s Amended Motion for Partial Summary Judgment* (Doc. 185). The Court denied Plaintiff’s Motion. *See Memo. Op. and Order* (Doc. 233) (“Prior Order”). Plaintiff filed the instant Motion nine days later, arguing that “reconsideration is needed to correct clear error and prevent manifest injustice.” *Motion* at 6.

## II. LEGAL STANDARD

The Federal Rules of Civil Procedure do not recognize a motion for reconsideration. *Ysais v. Richardson*, 603 F.3d 1175, 1178, n.2 (10th Cir. 2010). When such a motion is filed within ten days of a final order, it is construed as a motion to alter or amend a judgment pursuant to Fed.R.Civ.P. 59(e). *Id.* at 1178. “Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.” *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). Such a motion “is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing.” *Id.*

## III. DISCUSSION

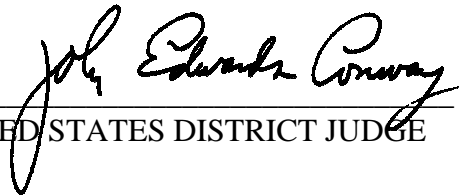
Plaintiff does not identify any intervening change in the controlling law or any new evidence previously unavailable, focusing instead upon an alleged need to correct clear error or prevent manifest injustice. *Motion* at 6. The only error identified by Plaintiff is a rehashing of their summary judgment argument as to the definition of “gross taxable rent,” *id.* at 7-8, which the Court has already considered and rejected, *Prior Order* at 3-4. Moreover, no manifest injustice exists. The Court has not previously ruled that Plaintiff is entitled to anything other

than the right to advance its argument that Defendants, as trustees of tax revenues, improperly failed to remit these taxes. *See City of Gallup, New Mexico v. Hotels.com, L.P.*, Case No. 06-0549 (Doc. 54). If any such ruling had been made, then Plaintiff's Motion for Partial Summary Judgment would not have been necessary. The Court finds no basis to reconsider its prior Order.

#### IV. CONCLUSION

Plaintiff City of Gallup's *Motion for Reconsideration of Denial of Plaintiff's Amended Motion for Partial Summary Judgment* (Doc. 234), filed November 6, 2009, is DENIED.

Dated October 7, 2010.

  
SENIOR UNITED STATES DISTRICT JUDGE

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